

DEPARTMENT OF STATE
THE LEGAL ADVISER

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MEMORANDUM

August 28, 1970

TO: L/PMO - Mr. Robert H. Neuman
FROM: L/PMO - Charles J. Pitman
SUBJECT: Latin American Views on Law of the Sea

1. A Divided Camp. Recent events indicate quite clearly that there is no solid Latin American bloc which can be expected to act in concert on Law of the Sea and seabeds issues. At least four distinct groups of countries can be identified. First, there are the traditional "hard line" countries which now claim or publicly support a 200 mile territorial sea limit for the purposes of exercising sovereignty or for other jurisdictional purposes: Brazil, Chile, Ecuador, Nicaragua, Peru, Uruguay, Panama, El Salvador, and Argentina. Although those nine countries signed the Montevideo Declaration of May 8, there is no unanimity within the group. Chile and Argentina are much more compromising in their attitude than the others. Panama and El Salvador are followers, not leaders. Nicaragua claims a 3 mile territorial sea limit.

Second, there are those states which actively oppose extreme territorial sea claims: Venezuela, Mexico, and Costa Rica. Mexico voted for the Lima Declaration of August 8 but with the very strong reservation noted later in this memorandum. The two land-locked Latin American states, Bolivia and Paraguay, joined with Venezuela in voting against the Lima Declaration. Bolivia voted against the Declaration saying it was not representative of Latin America because it reflected the interests of only some states. The head of the Paraguayan Delegation at the Lima Meeting, Alberto Nogues, said that Paraguay opposed the Declaration as being contrary to GOP policy because of the provision giving coastal states the right to extend their territorial seas, areas over which, according to Nogues, other states--especially land-locked states like Paraguay--have limited rights.

A third group of countries, Colombia, Honduras, Guatemala, and Guyana, are a mixed lot. Colombia, Honduras and Guatemala voted for the Lima Declaration. Rumors circulating have colored Honduras and Guatemala on the verge of moving to 200 miles. The Honduran Government has expressly denied these reports. The Guatemalan Foreign Minister has said that the 12 mile limit has been overtaken by

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events since 1958. The Guatemalans are apparently thinking that the infiltration of Cuban terrorists by sea could be controlled by an extension of the territorial sea limits. The Honduran Government is under some pressure to extend its present 12 mile territorial sea. Our recent visit to Guyana has elicited an assurance from the GOG not to extend its present 12 mile limit at least until 1971, on the condition that an international LOS conference will be underway or imminent at that time.

The Caribbean states constitute a fourth group whose interests should not be expected to approximate those of the Central and South American countries in all cases. Edmundo Vargas, Legal Adviser of the Chilean Foreign Ministry, has noted differences between the Caribbean versus an "oceanic" outlook as evidenced by the voting (or lack of it) of Jamaica, Trinidad and Tobago, and Barbados at Lima. The Dominican Republic, for example, stated in a reservation to its signature of the Lima Declaration that it interpreted the phrase "maritime sovereignty" in accordance with common principles of international law as reiterated in the 1958 Geneva Territorial Seas Convention. Our canvass team concluded that the GOJ does not favor extreme extensions of territorial sea limits. The team reported that "Jamaica is more concerned over the radical Latin American position on law of the sea matters than over any 'conservative' inclination on the part of the USG."

2. The Hard Liners. The positions of Ecuador, Uruguay, Peru, and Brazil on territorial sea issues appear to be unalterable. Ecuador's Foreign Minister Valdivieso confirmed this in a conversation with Mr. Stevenson in June. Ecuador thinks that the U.S. is on a losing course on Law of the Sea matters and is not optimistic that a satisfactory agreement can be reached with us on fisheries. Emilio Oribe of Uruguay stated the essence of the 200 mile position when he told Stevenson in June that so much national honor was involved in sovereign claims of Latin American nations (i.e., 200 mile limits) that it would be impossible to abandon them even in the context of an international agreement. Peru's obstinancy on LOS issues is proverbial; the unilateral "Lima Declaration" of late April was adopted without substantial change by participants at Montevideo and became the Montevideo Declaration. Brazil was the leading spokesman for the 200 milers at Lima and has reportedly (Italian Embassy, Washington) dispatched a roving ambassador to West Africa in an attempt to persuade countries there to extend their territorial sea limits.

3. Rumblings of Dissatisfaction and Problems of Confidence. Nevertheless, there are indications that the hard liners are experiencing difficulty in winning disciples. The Montevideo Conference was apparently not as harmonious as its promoters

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claimed. The Lima Meeting was intended by its organizers to widen Latin American support for the Montevideo Declaration, implying approval, at least in principle, of a 200 mile limit. The final result was short of that objective. With Uruguay and Venezuela taking opposite sides, the question of the limits of maritime jurisdiction jeopardized for a time the progress of the meeting. In that instance, Peru apparently felt compelled to approach various foreign offices on an urgent basis to appeal for "flexibility" in the name of Latin American unity. A source in the Bolivian Foreign Ministry deemed to be reliable confirmed that differences exist among the LA's, and that those countries realize that a majority of the world's nations want to fix territorial sea limits between 3 and 12 miles.

Moreover, there is evidence that some Latin American and Caribbean countries are beginning to resent the persistent efforts by the West Coast Latin Americans to slant regional LOS meetings solely toward their interests. Trinidad and Tobago's representative at the UN Seabeds Committee meeting termed the West Coast LA countries' attitude and conduct at Lima as "oligarchic." Bolivia voted against the Lima Declaration after its move to have a reference to land-locked states included in the Declaration was given shabby treatment. (A Bolivian official later commented that the GOB had opposed the Lima Declaration not for what it contained but for what it did not.)

A Peruvian official told the Costa Rican Foreign Office Director General "in confidence" that if a UN LOS conference were held soon, the "200 milers would lose." The Peruvian and Uruguay's Oribe said that the 200 milers' tactic would be to seek African and Asian support to block effectively a UN conference or to sabotage it by loading the agenda. (This comment could presage difficulty in the General Committee for obtaining satisfactory allocation of either 26(c) or the separate Soviet LOS item.)

The Lima Declaration contains a significant qualification to the right of a coastal state to establish the limits of its sovereignty and maritime jurisdiction in the phrase "in accordance with reasonable criteria." This qualification was, of course, opposed by the nine signatories of the Montevideo Declaration. Mexico, the Dominican Republic, and Venezuela made explicit reservations on this point: Mexico, which voted for the Lima Declaration, interpreted "reasonable criteria" as constituting extension of territorial sea limits of up to 12 miles; Venezuela stated that it could not accept any territorial sea extension which infringes in any way or affects its rights of free navigation or other rights it enjoys in waters adjacent to coasts.

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According to Vargas of Chile, the adoption of the "reasonable criteria" phrase makes the Lima Declaration more susceptible of Latin American consensus than the Montevideo one. Vargas concluded that "reason" ~~had~~ prevailed at Lima and that although there will be no LA bloc at any international LOS conference, "at least 12 or 14 LA countries are in general agreement on major issues." On the basis of available evidence, that assessment may be unduly optimistic. What Vargas does not say is that several signers of the Lima Declaration, e.g., Argentina, Mexico, Chile, Nicaragua, Costa Rica, and Guatemala, appear willing to compromise on the territorial sea issue.

4. The Moderates. Mexico and Venezuela have become quite vocal and active in working for a moderate position on LOS issues. The Venezuelan Foreign Minister told Ambassador McClintock recently that we would be "allies" in any law of sea conference. Argentina and Chile, particularly the former, continue to work more and more independently from the other states which espouse extreme sovereign and jurisdictional claims. The Argentine Legal Adviser confirmed to Mr. Stevenson in June that Argentina makes no territorial sea claim; the 200 mile limit relates to resources control. Argentina is quite concerned with interference to her freedom of navigation which the 200 mile claims, particularly Brazil's pose. Costa Rica feels that legislation now pending in its Congress and purporting to extend CR's territorial seas to 200 miles is inappropriate while preparations for a U.N. LOS conference are underway. Costa Rican Foreign Minister Facio recently told our Ambassador that the GOCR categorically opposes the concept of a 200 mile territorial sea and officially supports Mexico's advocacy of a 12 mile limit. Facio acknowledged that the Costa Rican delegation at the U.N. was under considerable pressure from proponents of a 200 mile limit.

Though an original member of the 200 mile club, Chile--especially Legal Adviser Vargas--goes to some lengths to dissociate herself from the more extreme stands of Ecuador, Peru, and Brazil.

It seems clear that as these countries develop larger navies and wider maritime interests generally, they will be less apt to tolerate restrictions on their freedom of navigation in the form of excessive jurisdictional claims.

5. Summing Up. With some Latin American and Caribbean countries, principally Mexico, Venezuela, Guyana, and Barbados, our advancing efforts seem to have produced

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There is reason to think that further tactful pressure on certain other major Latin American countries, like Chile and Argentina, would be productive. Hopefully, Mr. Stevenson's contemplated trip to Colombia this September will strengthen the GOC's resolve to resist domestic pressure for a territorial sea extension.

It is important to acknowledge the attractiveness to some LDC's, in Latin America and elsewhere, of the principle that a coastal state has the right to set unilaterally the limits of her own territorial sea and to implement measures for her own economic benefit and security. Nevertheless, it may not be idle speculation to say that Ecuador, Peru, and Brazil have pressed their stubborn views to the point of antagonizing their own LA neighbors. Those three countries had probably hoped for more than they got at Lima. But their self-serving and rather abrasive conduct at Lima clearly annoyed some participants, particularly the land-locked states.

I think that the information set out above supports--if not confirms--the theory that the position of Latin American countries which advocate a 200 mile territorial sea limit is not as strong as is generally assumed. I conclude, therefore, that a satisfactory modus vivendi can be achieved with Ecuador and Peru in the quadripartite talks without compromising our Law of the Sea position.

We have at least three strong bargaining points in our favor at the CEP talks: First, we seem to have only two real adversaries, Ecuador and Peru; Chile, according to Vargas, sees herself as a mediator between those two countries and the U.S. (Ecuador has already given a minor concession in agreeing that fisheries and LOS subjects can be treated separately, something that she has been reluctant to do for quite some time.) Second, while I am not completely familiar with the issues involved, I presume that the Foreign Military Sales aspect can and will be used to our best advantage. Finally, the possibility that we may be moving to a law of the sea conference in 1971 would suggest that we could afford to hold our peace with Ecuador and Peru at least during this round of quadripartite talks--realizing that their views during an eventual conference may well not receive wide support.

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